

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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NORCAL TEA PARTY PATRIOTS, . CASE NO. 1:13-CV-341
et al., .
Plaintiffs, .
- vs - . *Discovery Conference via Telephone*
INTERNAL REVENUE SERVICE, . Tuesday, March 28, 2017
et al., . 1:30 p.m.
Defendants. . Cincinnati, Ohio
.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MICHAEL R. BARRETT, DISTRICT JUDGE

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P R O C E E D I N G S

(In chambers. All counsel appearing by phone.)

COURTROOM DEPUTY: Counsel? Hello. Hi. Thanks for waiting. Here's Judge Barrett.

THE COURT: Hey, good afternoon, everybody. How you doing?

MR. GREIM: Afternoon, Judge.

MS. BECKERMAN: Good afternoon.

THE COURT: Laura, how are you?

MS. BECKERMAN: I'm doing well, thank you, Your Honor. How are you doing?

THE COURT: I'm fine.

Eddie, how are you?

MR. GREIM: We're very good here in Kansas City.

THE COURT: All right. Let me run through a couple of observations, and then we can pick up the conversation anywhere you guys want to.

And, Laura, I'm just using plaintiffs' list, not for any particular reason, but just because I'm using it. Okay?

MS. BECKERMAN: Okay.

THE COURT: So here's my thoughts.

"IRS treatment of class members." Okay. My thought is the document request where Eddie says whether in the class or not, my feeling is they're entitled to class-wide production and discovery but not beyond the class itself.

1 Then in terms of "the relevant time period," Eddie wants
2 to go back to, like, two thousand, whatever it was, five or
3 six. I think we should limit discovery to the class period
4 itself.

5 As to the "IRS metrics," I think that Eddie's point is
6 fairly well-taken that if, in fact, the IRS's general ordinary
7 practices are not going to be served up, then I think it's
8 tough to argue that what happened was within the general
9 ordinary practices; because if you're going to argue that as a
10 defense, then you have to tell them what the general and
11 ordinary practices are.

12 In terms of "other governmental agencies," no discovery on
13 that unless somewhere in your e-mail production they find
14 something that is a request or a response to a request or
15 something and it looks like it's incomplete, and then perhaps
16 we could have a targeted look into the other agencies. So not
17 blanket subpoenas, none of that stuff. But if there is a
18 targeted reason to explore something that came in or went out
19 to another agency and it doesn't look like what the IRS has in
20 their files would be a complete, for example, a complete
21 e-mail chain, then we'll talk about going farther.

22 So those are some general observations. So let me hear
23 your complaints.

24 And the other thing is, in terms of a general observation,
25 when I go through Laura's Interrogatory Number 7 --

1 I mean, I'm just throwing out some things there.

2 -- in there, they discuss the EO Determination Group; they
3 discuss BOLOs; they discuss screening, check sheets; they
4 discuss case assignment guides; they discuss flags for files;
5 they discuss the EO specs and counsel's discussion of
6 developing educational materials; they talk about the tag
7 spreadsheets; they talk about group meetings in April and a
8 workshop in July; they talk about July 2011 rulings and the
9 director changed some of the BOLO stuff; they talk about
10 buckets; they talk about training sessions which should have
11 notes and materials.

12 I mean, it seems to me, Eddie, that they pretty much told
13 you where to look if -- and I don't know whether you guys have
14 looked there or not, but it seems fairly complete to me as
15 long as Laura is willing to say that you've got all the
16 responsive documents.

17 So those are my observations. Who wants to dig in and
18 complain first?

19 MS. BECKERMAN: Sure --

20 MR. GREIM: Your Honor, I won't complain. This is
21 Eddie for the plaintiffs. But I could start with that issue
22 because, you know -- and I think I've got just a short little
23 idea for how to handle 12 and 13.

24 We recognize everything you said on Rog 7. But, you know,
25 basically Interrogatory 7 is an amended response that they

1 filed after we deposed Ron Bell to get that information out of
2 him, so we're well aware of all that. I mean, we're
3 investigating all those angles. It's not that we kind of
4 forgot that we deposed Ron Bell and learned all that
5 information or anything like that. I know -- no one is saying
6 that. But we're well aware of it.

7 But here, to us, is the final step for 12 and 13. You
8 know, there is a system that could be reviewed. There is
9 something that they could do to be sure that what Ron Bell
10 told us at our deposition that we took of him and that made
11 its way into the amended Rog 7 response is basically it. And
12 we think it's this:

13 There was a system that's called Web ETS. Now, they've
14 referenced a related system called EDS, like my name, Eds,
15 that is -- that they've already used to respond to 12. But if
16 they were to look at this Web ETS and they were to take your
17 Ron Bell, take your Stephen Seok, take your heads of that
18 advocacy group, you could run -- you could go through their
19 time entries, Your Honor, and you could see if there were any
20 other time spent on a broad-based review.

21 That's an idea. I mean, I -- unfortunately, we thought of
22 it over the last week.

23 THE COURT: So you got who, like Hofacre, Bell and
24 Seok, whatever the person's name is?

25 MR. GREIM: Yeah, Seok. So you could look at those

1 people, and you could say, you know, "Okay. Well, do you see
2 stuff in there?" Like for Ron Bell, what that might show,
3 like that could show us what we later learned, I think through
4 these calls, that his secondary Secondary Screening went all
5 the way from January to May. So we -- you know, they could do
6 that. And, in fact, we've gotten an e-mail that -- you know,
7 it lists -- it's from Cindy Thomas to several other people
8 from April of 2012, and it mentions yet another review of
9 advocacy cases of more than twenty --

10 THE COURT: Well, tell me what Web ETS is. Is that a
11 program? I'm not very good at computer stuff. What is that?

12 MS. BECKERMAN: Your Honor, it's a time-keeping
13 software. So Web ETS is the way that IRS employees keep track
14 of what cases they've charged time to. So, for example, if
15 you're assigned to review San Angelo Tea Party, you would use
16 Web ETS to log the facts that you were assigned to do
17 something with respect to that case.

18 It does not provide bigger-picture information about a
19 purpose of your work on the case. That is found in the Case
20 Chronology sheets in the case files, the documents we've been
21 talking about the past couple of times here.

22 We used Web ETS queries to answer the Rog 1 response to
23 plaintiffs. So we have, in fact, engaged in looking at Web
24 ETS, and we've given that type of information to the
25 plaintiffs already.

1 MR. GREIM: So, Your Honor, that's -- let me just
2 pick up where I left off. You know, whether it's Web ETS,
3 whether it's going through, you know, like this e-mail that we
4 found where, you know, probably no one is entering time on
5 this, but you can see an e-mail where 20 groups are going to
6 be reviewed to prepare for the bucketing process just to
7 circle back through and make sure that they have, you know,
8 what the main inspections were. Do they want to stick with
9 the five that we gave them, or do they realize that there
10 really should be two more? And they might stick with the
11 five.

12 Then, Your Honor, they -- remember, there is the issue of
13 whether they do it just for the class reps or for all class
14 members. So we think they ought to continue the chart out for
15 the class members, one of the other issues --

16 THE COURT: No. I already mentioned on that, I
17 thought -- one of the interrogatories was, you know,
18 information whether or not a class member, and I've already
19 said I think it's not limited to class reps, it should be
20 class-wide, all 423, whatever it is.

21 So go ahead.

22 MR. GREIM: Okay. So then, after they've done that,
23 they could confirm that they've produced everything, and they
24 could name what it is that they're relying upon. So if they
25 are relying on the tracking spreadsheets or if they would

1 direct us there, then they could put that in their response.
2 It's not in there right now. And if it turns out that there
3 are a few other e-mails or spreadsheets, give them a chance,
4 that they would rely upon, then they can produce those to us
5 and just identify them in the response as the other thing that
6 we need to look at.

7 But what they would have to do, Your Honor, is go back --
8 I mean, right now the responses 12 and 13 still have the
9 objections to everything. They basically say, "Hey, to
10 resolve this, we'll answer it for the five people, the five
11 class reps, using the inspections you've told us about."

12 So what they need to do is take away the objection, say,
13 "Look, this is really the best we have," and give it for
14 everybody, and then we move on. They do that by the first
15 date. We would move that back. I remember Laura and some
16 others were going to be gone on April 14th. Move that back --

17 THE COURT: Hang on. Hang on a second. Let me ask
18 you a question. So this ETS thing, I mean, what -- Laura says
19 all that's going to show is IRS Employee X had time entries --

20 I mean, Laura, let me just ask you this. Is it possible
21 to serve up a screen shot on the class rep, see what that
22 shows and then see if Eddie wants to go further, or is that --

23 Give me your thoughts on that.

24 MS. BECKERMAN: Your Honor, I believe that it is
25 possible to query this for the people who charged time to the

1 five class reps. I believe that is possible. I personally
2 have never used Web ETS because I don't work at the IRS; but
3 from sitting in on the 30(b)6 where we talked about these
4 things, that's my understanding.

5 THE COURT: Well, Eddie could you just do an
6 exploratory on this if Laura can get that, take a look at it
7 and see if it has the kind of stuff you're looking for, or is
8 that not helpful?

9 MR. GREIM: Well, Your Honor, that's pretty close.
10 What we would say, though, is rather than stick with the five
11 class reps, I think maybe doing it with the advocacy leaders
12 and just -- I mean, heck, just produce their -- produce the
13 results of that query. Because then we can go through and we
14 can see, okay, Stephen Seok was a busy beaver in, you know,
15 November of 2012, going through and list inspections in there.

16 Well, maybe there was never an e-mail where they talked
17 about it. That maybe isn't in the Case Chronology, but now,
18 finally, through Web ETS, we see it.

19 So we'd rather go with the people that were holding the
20 cases.

21 Now, the one thing I'd say that we'd miss would be
22 something like the e-mail I talked about where Cindy Thomas is
23 e-mailing other people about a review of these cases. I don't
24 know that that shows up in ETS. So I wonder if some sort of a
25 broader e-mail search for, like, "Tea Party within X words of

1 'review'" wouldn't be a bad idea.

2 THE COURT: Well, have you seen one of these of what
3 an ETS screen shot looks like? I mean, does it have any
4 detail or is it just --

5 MS. BECKERMAN: Yes, I have seen it. It does not.
6 All it does is list the name of the individual employee who
7 was assigned.

8 And as I think Mr. Greim -- or as Eddie is aware, early on
9 when we answered Rog 1, that is exactly what we did. We went
10 to the named plaintiffs and we pulled up the names of people
11 that appear on Web ETS, and we gave him that information.
12 Then later on, after the class certification I believe it was,
13 we expanded it to the 298 that were in the TIGTA list because
14 this was before the class notice went out. We gave them all
15 the people that had charged time to all of those cases as
16 well.

17 Your Honor, I do not know for sure, but I don't believe
18 that we can pull up a person and see all the cases they worked
19 on to do it the way that Eddie is suggesting. Also, that
20 would implicate 6103 issues because there would be cases that
21 had absolutely nothing to do with this case that aren't class
22 members.

23 Also, what Eddie is asking us to do is really, once again,
24 to backtrack. I mean, Your Honor, with respect to the fact
25 that our Answer to Interrogatory 7 is very thorough, and it

1 really lays out all the information, they've had this Rog
2 answer for two years now. It's from March of 2015.

3 And, Your Honor, with respect to what Eddie was saying
4 about the difference between us responding as to the named
5 plaintiffs versus class, we completely agree that plaintiffs
6 are entitled to documents about the entire class; and, in
7 fact, that is what we've been doing from the very beginning of
8 merits discovery.

9 So with every document request, like Eddie just mentioned,
10 "Why don't we do a search of 'Tea Party' and 'review,'" well,
11 we've done searches like that. We've done dozens and dozens
12 of searches agreed upon by both parties. What we're saying is
13 they have all the documents from all the class members and
14 also the files.

15 And so Rule 33(d) says that, you know, to answer the
16 interrogatory, we've given them all of this information. The
17 fact that they were able to identify an e-mail from Cindy
18 Thomas about the bucketing review --

19 Which is, in fact, one of the reviews that is in our
20 Interrogatory 12 answer, so this is not some new review.

21 -- it shows that the documents reveal all of the
22 information that is to be had and that plaintiffs currently
23 have access to all of that information.

24 THE COURT: So are you willing to state, Laura, that
25 they've not only got all the claim file information but all

1 the e-mails relative to those particular files and those
2 advocacy groups?

3 MS. BECKERMAN: I certainly believe so, Your Honor.
4 I mean, the searches we came up with were very broad. We gave
5 them everything. We did -- so if an e-mail came up and it was
6 about a class member, we gave it to them. If an e-mail came
7 up and it was about a nonclass member, a total third party,
8 then we marked that as "Don't Produce," and we had a tag for
9 that.

10 But they have every -- all the e-mails, everything that
11 came up as to all the dozens and dozens of searches that we
12 ran and that we ran after they started working with us, and we
13 gave them documentation about each search. So, you know, I
14 could pull up a spreadsheet and tell you that we agreed to
15 search "'Tea Party' within 50 words of 'Advocacy' within 20
16 words of this." You know, they were very in-depth and broad
17 searches. They have everything that have to do with the case
18 and that came up in these very broad searches and everything
19 that has to do with the class members at large.

20 THE COURT: Would you be willing to give Eddie some
21 kind of an exemplar on the ETS thing just so he can take a
22 look and see what's on there and whether or not he thinks he
23 needs more?

24 MS. BECKERMAN: Yes. Well, I'm looking at my
25 colleagues because I thought we produced this --

1 MR. GANAHL: Your Honor, this is Joe. I think we
2 produced that earlier in the case where, at the time, it was
3 ten class members. We produced one for each of the class -- I
4 mean the plaintiffs.

5 MS. BECKERMAN: We can certainly send that over if
6 there is some confusion on the issue and --

7 MR. GREIM: Your Honor, this is Eddie. You know,
8 rather than build in another back and forth, it seems to me
9 that if they could just try to look at ETS, Web ETS, and if
10 the response is that you can't actually look under somebody's
11 name and see what they worked on, then that's the response.
12 Then Web ETS won't allow it. And, you know, then that was a
13 dead end, and they can just tell us that.

14 But, no matter what, there's got to be an amended response
15 anyway. So I don't really need, I don't think, Your Honor, to
16 see an example. If they tell us that they can't do it, then
17 they can't do it.

18 Now, maybe the report has other groups on there. That
19 could just be redacted. Remember, we're only running reports
20 on a couple of the employees anyway. So if it's listing other
21 people, then they can just redact that. We don't need to see
22 that.

23 THE COURT: But I thought that Laura said you can't
24 run a report on an individual IRS employee, it's got to be
25 done by the group, or did I mishear that?

1 MS. BECKERMAN: No, Your Honor. That's my
2 understanding of the -- I'm not a hundred percent, but that's
3 my understanding --

4 THE COURT: Okay. Can you guys dig into that, Laura,
5 and just clarify that, talk to Eddie offline and see if you
6 guys can come to some kind of an understanding?

7 MS. BECKERMAN: Sure.

8 THE COURT: Okay.

9 MR. GREIM: Your Honor, we --

10 MS. BECKERMAN: So just one other issue that you
11 mentioned in the introduction discussion that I wanted to seek
12 clarification on.

13 MR. GREIM: Your Honor? I'm sorry. Before we do
14 that, though, I wanted to -- before we move on to new issues,
15 I had one more thing on this.

16 THE COURT: Okay.

17 MR. GREIM: I just want to clarify. I mean, there
18 are many e-mails that we see that relate to our case that are
19 attached to the Congressional reports and things that do not,
20 you know, that weren't produced to us. Now, we're still going
21 through the very final production, and we still got some
22 documents on something else even yesterday, I think a limited
23 amount. But there are some other things that the search
24 results, the search terms did not pull up, because those were
25 largely crafted for lots of other requests.

1 So I just don't want to let go of the idea that the IRS
2 make one more shot at -- whether it's through Web ETS or
3 whether it's some short query of "review within three of 'Tea
4 Party'" or something. You know, if they're willing to then
5 say that they're all done, then they're all done. But I think
6 the amendment has to go in there and they've got to actually
7 name the documents and not just the Case Chronologies. So
8 that's all I wanted to --

9 THE COURT: I thought a few phone calls ago I was
10 told, and I can't remember by whom, that you guys agreed on
11 the search terms and the scope of the e-inquiry. Is that not
12 accurate?

13 MS. BECKERMAN: That is true. We did. We agreed on
14 the searches and the search terms.

15 MR. GREIM: Yeah. But for the other -- Your Honor,
16 for the other ones, I mean, for this one we've been saying
17 that, you know, it shouldn't take search terms to just know
18 what the waves of review were. I mean, for some of the other
19 requests, it turns out that you really -- search terms is the
20 way to go. But here, I don't know. I sort of never thought
21 we'd be in this position, and that's why I am actually
22 throwing that out there as a last-ditch effort.

23 THE COURT: Well, I mean, couldn't Bell and Seok or
24 Soke, whatever his name is, I mean, wouldn't these people be
25 able to tell you what the waves of review were?

1 MR. GREIM: Well, we hoped that -- I mean, I think
2 Bell is -- if you had to just choose one person with the
3 limited amount of time left, we would hope that Bell would be
4 able to. But, then again, if EOT had the files, you know,
5 that they -- once they got the paper files, there could have
6 been a review that Bell was out of the loop on. But, even
7 then, somebody in charge of EOT would know that.

8 Our other point, Your Honor, is we'd like to avoid
9 deposing all these people. If they have the same people
10 working there who can just tell us, then we can focus on the
11 other stuff.

12 THE COURT: Well, so what you're telling me is that
13 you have found e-mails that you think are relevant and it
14 would normally be responsive to the request, but the e-mails
15 were not produced by the IRS, they were obtained in some other
16 manner; is that right?

17 MR. GREIM: Yes. You know, e-mails that are attached
18 to the Congressional reports, like the Senate or the House,
19 that's mainly what we relied upon for class certification.

20 MS. BECKERMAN: Your Honor, this is the first we've
21 heard of it. I've never heard mention of any e-mails that
22 they think they're missing and --

23 THE COURT: Well, that's why I raised the question,
24 Laura.

25 I guess my question to Eddie would be: If you looked at

1 those e-mails, would they have fit in within the search terms
2 that were agreed upon by you guys, or are they outside of that
3 scope?

4 MR. GREIM: Your Honor, I want to make clear: I'm
5 not saying that those would have fallen under the search
6 terms. My point is that the search terms were, you know,
7 relatively narrow, and they were what we could do on certain
8 topics. But to suggest that because we had the search terms
9 we have all the relevant documents -- I mean, those
10 workarounds came at a cost precisely because we can see these
11 other documents attached to the Congressional reports. But we
12 wouldn't --

13 I mean, Your Honor, we would not raise for the first time
14 on our third call with the judge if we, for some reason,
15 thought that there was a search term malfunction or something.
16 I don't make that argument.

17 THE COURT: Well, how would Laura expand the search
18 such that the kind of e-mails you're talking about would be
19 caught up in her net?

20 MR. GREIM: Well, frankly, I think we're sort of past
21 that point. Now that we're getting to the end of the search
22 term production and we see what it did and did not yield and,
23 you know, we can see that, my gosh, it did not even yield this
24 or that e-mail --

25 And I can't give you an example right here.

1 THE COURT: That's okay.

2 MR. GREIM: To me, I'd rather just -- rather than go
3 on forever and do search terms, I'd rather just move forward
4 with the good documents we have. But it's on something like
5 this where we're identifying the inspections that I make the
6 bold move of suggesting, you know, a search that might tell us
7 reviews that we're missing.

8 THE COURT: But, I mean, describe that search. What
9 are they -- because Laura's point, as I understood in the last
10 conversation, was that she would be searching the same
11 information that's already been produced, so you guys should
12 do it if you think there is items that exist. But maybe I
13 misheard that as well.

14 MR. GREIM: Somebody smarter is going to answer that.
15 Go ahead, Dane.

16 MR. MARTIN: Well, I don't know about that, but
17 hopefully this will help clarify.

18 I think in the IRS's briefing they said that they've
19 produced approximately 15,000 documents of 2.1 million total
20 that exist. And, really, that's a reflection that these
21 search terms have been, really, snapshots on any given topic.

22 So if a request says "Please produce timelines," we then
23 worked with the IRS to develop criteria that they can search
24 for that would produce timelines.

25 But the biggest question we have here on the topic of

1 inspections is whether there are documents that have fallen
2 through the holes, would not be captured by some other topic,
3 and that a search or series of searches might pick up reviews
4 that occurred.

5 And so, really, on top of these overall information
6 systems like Web ETS and EDS and things like that, could there
7 be a search that says for the e-mail that we just uncovered
8 from this rolling production we've seen. It's a good example
9 because it says, "Here are a list of organizations we would
10 like to start reviewing," and then it lists 20 organizations.
11 And so we just found this in our review, and a search term
12 that might pick up that type of language would ensure that it
13 was a discrete search made on this topic of inspections.

14 THE COURT: Well, that's kind of what I'm asking.
15 How would you define the search that you would ask Laura to
16 undertake?

17 MR. GREIM: I'd say "Tea Party" or the word "Tea
18 Party," the phrase "Tea Party" or the word "advocacy" within,
19 say, you know, five words of "review." I mean, I -- that's an
20 idea that occurs from just getting this e-mail here.

21 MR. MARTIN: Or, Your Honor, a list of organizations,
22 things like that. Maybe we can just work with the IRS. If
23 we're clear about what needs to occur, we can do our same
24 process and work with the IRS to develop a set of search
25 terms.

1 THE COURT: Okay. So let me hear what Laura says
2 about that.

3 MS. BECKERMAN: Your Honor, back on November 14th we
4 had a two-and-a-half-hour call with the plaintiffs where we
5 developed numerous searches. This was after we produced about
6 30,000 documents and after the first five months of discovery
7 where plaintiffs refused to engage in any discussion to
8 collaborate.

9 And, you know, I'm not -- we are not opposed to the idea
10 of running one more search, but a search as broad -- and some
11 of the searches they're suggesting could potentially be broad.
12 We could be talking, like, 20,000 or 30,000 documents to
13 review, which is time intensive, especially when plaintiffs
14 are having us schedule so many depositions in the next couple
15 of months.

16 Also, when Dane mentions that he wants a list of
17 organizations, we have given them every single list we can
18 find in the database. So the documents I e-mailed to you, the
19 second one was our updated Supplemental Response to Request
20 for Production Number 56. These are the lists of -- any time
21 there is an advocacy organization on the list, it's in that
22 production that we gave them about a year ago. We've produced
23 that information.

24 And what I'm hearing, really, from Eddie and Dane here is
25 that they want to engage in one last fishing expedition, that

1 they have no evidence that there is anything else out there,
2 but they want us to run a few more searches just to see what
3 they can mop up. We have really been through this, and we've
4 done dozens and dozens of searches that they have asked us to
5 do. So it does seem a little bit ridiculous at this late date
6 that they want us to add yet more searches.

7 THE COURT: Well, but I think I hear him saying that
8 they -- some documents that they have found --

9 And you guys found them from where, the Congressional
10 Record, or where?

11 MR. GREIM: No. The one we are talking about just
12 now is RFP 21-226. But that's the one that actually has a
13 list of people that they want to review.

14 MS. BECKERMAN: So that means we produced that
15 document, Your Honor. So they have --

16 THE COURT: That was --

17 MS. BECKERMAN: They have the document from us, our
18 --

19 THE COURT: I was going to make that point for you,
20 Laura, but you made it for me.

21 So what's your response to that, guys?

22 MR. GREIM: Yeah. I mean, I was making two different
23 points. This is -- I was not using this as one of the
24 documents that Congress had that we didn't.

25 But, I mean, Your Honor, I guess my point is this. This

1 is an example -- you know, there has been no search term run
2 on the question of groups of reviews that they did. There
3 have been search terms run on other discrete requests, like on
4 timelines and things like that, and then we actually did some
5 search terms that ended up covering several requests. We kind
6 of stepped back and made them more general to cover more
7 things, but we don't have one on this.

8 Frankly, our thought was always that this, among all of
9 our requests, would be inappropriate for search terms.

10 Now, I changed my mind now that I, you know, in the last,
11 probably, three weeks before the IRS say, you know, there
12 truly is no one we can talk to who can tell us whether there
13 were these broad-based reviews. Now I'm falling back on the
14 search term point, and I'm just --

15 THE COURT: Well --

16 MR. GREIM: I mean, we are fortunate that it happened
17 to be responsive to a different search. I mean, we're lucky.
18 It's not that they --

19 THE COURT: Well, let me ask you this. Are you guys
20 willing to offline discuss this and figure out if, in fact,
21 you can get a search that would be narrow enough, that it's
22 not overburdensome, but it is focused enough that it gets
23 relevant material? Is that something you're willing to take a
24 shot at working at?

25 MR. GREIM: Yes, Your Honor.

1 THE COURT: Laura?

2 MR. GANAHL: I'm sorry, Your Honor. This is Joe. I
3 don't mean to step on Laura's toes. She is looking for
4 something.

5 We're not willing to agree to that, Your Honor. Mr. Greim
6 has no proof that he has a Congressional document. I mean,
7 that's a very serious allegation that he's making, that we
8 haven't produced things that are attached to Congressional
9 reports. And there is no -- and I haven't heard what document
10 it is. And, if it was, I would certainly like to look to see
11 if we have handed it over.

12 We have in the past where we've been told that we haven't
13 given things or we haven't included people, where we did then
14 a simple search and realized they're on the list.

15 I will point out what Laura is looking for is -- and I'm
16 stalling. One of the early interrogatories asked for "Tea
17 Party" or "Republican" or "Conservative" or a whole bunch of
18 --

19 MS. BECKERMAN: Document request.

20 MR. GANAHL: I'm sorry. It was one of the early
21 document requests. I put a team of, like -- what? -- 10 or 12
22 to 15 attorneys that had to review tens of thousands, if not
23 hundreds of thousands of documents because that was the search
24 term we did that was so broad that got all these. But we've
25 outlined in our discovery response to them how many documents

1 we got, how the hits worked, what search terms we used. So
2 what Eddie is saying now about running this search, we've
3 actually run a broader search than this.

4 It just seems like, Your Honor, that we're moving back to
5 where we were two weeks ago, and I'm just concerned that -- I
6 don't know. I guess, that's my concern, is that it just feels
7 like we're going back two weeks.

8 And I feel like we were making such progress. The Court
9 is aware of everything we've done. When we didn't have access
10 to search terms, we made our own search terms. And because we
11 didn't have the benefit of speaking to counsel, we made them
12 broader than we were.

13 Now let me hand it back to Laura. I apologize.

14 THE COURT: All right. Well, let's do this. Why
15 don't you guys have a conversation about this without me on
16 the call. Eddie can tell you what he thinks he's found, why
17 it possibly, if, in fact, it was missed and not produced,
18 whatever. Can you guys --

19 You don't have to agree to an ultimate production or
20 non-production, but can you try to work through that
21 yourselves offline?

22 MS. BECKERMAN: Certainly.

23 THE COURT: Okay. What's next then, guys?

24 MS. BECKERMAN: Your Honor. I'd like to --

25 MR. GREIM: How about if Laura goes? She had

1 something else.

2 MS. BECKERMAN: Sure. At the beginning of the call,
3 Your Honor mentioned that with respect to the plaintiffs' list
4 --

5 This is Number 6 on their list about IRS metrics.

6 -- that the Court was basically saying that if the IRS
7 can't produce metrics on something, then we shouldn't be able
8 to argue about that. I just want to take it from the big
9 picture down to the specific.

10 So, Your Honor, the one discovery request that plaintiffs
11 list here is Interrogatory Number 11. Interrogatory Number 11
12 asks: "For each year from 2006 to the present, please
13 identify the number of Applicants (whether a class member or
14 not) that had their Applications subject to development on the
15 basis of political activity, private benefit or private
16 inurement, lobbying activities." And for each entity it asks
17 for "the number of entities that received a development
18 letter; the number of these entities that received multiple
19 development letters; the number of these entities that
20 received an Unnecessary Request; and the number of these that
21 were denied tax-exemption."

22 So, Your Honor, it is true that the IRS does not keep the
23 statistics asked for in Interrogatory 11, and that is what we
24 said in our response.

25 I also understand from Your Honor's ruling that you, you

1 know, are saying that discovery is going to be limited to the
2 class. Here, they are asking for all applicants for
3 tax-exempt status --

4 THE COURT: We've moved past that, Laura.

5 MS. BECKERMAN: Yeah. So we don't have metrics on
6 that issue, and we are not going to be making an argument
7 based on any metrics on that issue because we don't have them.

8 However, with respect to different types of metrics that
9 they've asked for -- for example, in Interrogatory Number 9,
10 which can be found at 318-11 towards the end, they ask for
11 specifics about the ages of case closure of entities, both on
12 the tracking list and then entities in general, and we
13 produced -- we fully responded to that. We produced, I think,
14 ten different charts showing each year, the number of cases,
15 the average days, the median days. So there are many types of
16 metrics where we were able to answer, and we provided the
17 answers and we had them.

18 So I just wanted to clarify with respect to the Court's
19 ruling on the IRS metrics issue that it's only with respect to
20 the metrics that we do not keep. We, you know, obviously
21 can't provide an answer if they don't exist, and we obviously
22 won't be making an argument based on metrics that don't exist.

23 For the metrics that the IRS has produced, you know, many
24 other types of metrics plaintiffs have asked for, that we
25 produced them and that this ruling doesn't apply to the other

1 metrics that are not Rog 11 but Rog 9, Rog 8, other aspects of
2 the case.

3 THE COURT: Maybe I missed the point. I thought what
4 Eddie was getting at in his request was that they want to
5 know, kind of, what your broad approach is so that -- you
6 know, I think what he's trying to -- maybe I missed the point,
7 but I think he's trying to get past the situation where you
8 guys say: Well, we do this with all kinds of select groups.
9 We do this with zoos. We do this with churches. We do this
10 with institutions of higher learning. So the request we made
11 on these folks is not outside of our usual pattern in dealing
12 with cases.

13 That's kind of what I thought he was trying to figure out,
14 but maybe I'm totally wrong on that.

15 MR. GREIM: Your Honor, this is what we're trying to
16 figure out.

17 MS. BECKERMAN: Except, Your Honor, that is
18 Interrogatory Number 17. We did, in fact, respond to that.
19 So that's -- you know, the plaintiffs, they only reference
20 Interrogatory 11, which was the one I just talked about a few
21 moments ago where we don't keep those metrics.

22 But with respect to 17, it asks for every instance. This
23 is in the document I e-mailed to you, and it's also at
24 Document 318-10, page 18.

25 THE COURT: Laura, you'll have to accept my apology

1 for not memorizing all the info you've sent me. Okay.

2 MS. BECKERMAN: Oh, of course not. I just -- didn't
3 know if it would be easier to look at the stuff on the e-mail
4 or the stuff on the docket.

5 THE COURT: Well, which document are you talking
6 about now?

7 MS. BECKERMAN: So this is 318-10. It was attached
8 to the government's filing from our original Motion to Compel.

9 THE COURT: Oh, hang on a second. Give me a second.

10 MS. BECKERMAN: It's Page ID 10506.

11 THE COURT: Hang on.

12 (Pause in proceedings.)

13 THE COURT: Okay. 10506. All right. What am I
14 looking at?

15 MS. BECKERMAN: Sure. So Interrogatory Number 17
16 asks "for every instance in which the IRS designated a group
17 of at least five Applicants for centralization."

18 What we said in response to this is that it's overbroad
19 because anytime you designate five, that's going to be
20 hundreds of cases, but we agreed with plaintiff to limit it to
21 just the ones listed in our answer. We answered by pointing
22 to four examples. You can see that in the next couple of
23 pages: 10507, 10508, 10509.

24 THE COURT: Right. Yeah. I got it.

25 MS. BECKERMAN: So we've agreed already with

1 plaintiffs that we will not be bringing up any other
2 centralizations with respect to anything not described in
3 response to Interrogatory 17. And so here we really lay out
4 all the information that they asked for about these other
5 examples where the IRS centralized cases.

6 So, Your Honor, what you were getting at in terms of, you
7 know, is this something you normally do, well, I would --
8 think that we have, in fact, answered that. We agree to be
9 bound to just our Answer to Interrogatory 17 and not talk
10 about some other example not listed there.

11 THE COURT: Okay. So if you got into an ordinary
12 practice defense, you would be limited to what's on those
13 pages?

14 MS. BECKERMAN: Yes, to those examples. I mean, we
15 just talk about credit counseling, foreclosure assistance,
16 et cetera, right.

17 THE COURT: Ed?

18 MR. GREIM: Your Honor, I agree with that as well,
19 but we've got apples and oranges here. We shifted from
20 Interrogatory 11 to 17. I think we just heard, 17 talks about
21 centralization, which is something they did here. But that's
22 not -- but 11 talks about the specific types of inquiries they
23 made of people and whether those are ordinary, and 17 talks
24 about whether centralization is ordinary.

25 So I agree with you -- I mean, we cut a deal on 17, we've

1 got their responses here, they're limited to that, but that's
2 a different issue than Interrogatory Number 11 that we were
3 just discussing.

4 I mean, this is all -- I mean, frankly, I think maybe this
5 clarifies things a little bit, but don't be -- you know, 17 is
6 just a different issue. It's centralization, it's not the
7 processing of applications by asking questions on private
8 inurement, private benefit and the things that we have in
9 Interrogatory 11. So I just say that by way of clarification.

10 THE COURT: Isn't that something you can handle in a
11 deposition of IRS people, or not?

12 MR. GREIM: I'm sorry, Your Honor. What would we
13 handle?

14 THE COURT: Well, okay. All right. So you've got
15 the issue of centralization, so you take -- what was one of
16 them? You take asset foreclose. So you got somebody from
17 asset foreclosure. Run through the kind of questions you
18 have here. "Did you ask these people this, that and the other
19 thing?"

20 Actually, there is one that might fit better. Let's see.
21 Where is it? 10506. Let's see. Well, give me a second.
22 What was the last -- "support organizations" --

23 I was looking for one that might have, you know, where --
24 a question about donor base and stuff like that. It might be
25 relevant, but I'm not sure these examples fit that unless

1 you've got a healthcare organization that's raising money. I
2 don't know.

3 Laura, what do you think?

4 MS. BECKERMAN: Your Honor, I'm not entirely sure
5 that I completely follow. I think --

6 THE COURT: Okay. What Eddie is saying is, you've
7 given him a list of, whatever it is, four or five groups that
8 the issue is centralized. What he wants to know is, you know,
9 what other groups have you asked the kinds of questions that
10 you asked his class members. I think that's what he's saying.

11 MS. BECKERMAN: I'm not entirely sure, Your Honor,
12 that Eddie is interested in the questions with respect to
13 these other types of groups. I think that we generally agree
14 that when you're looking at (c)(3) and (c)(4) organizations
15 that are -- issue as (c) organizations, that they might merit
16 different -- like, than credit counseling --

17 (Phone connection interrupted.)

18 I think that with Rog 17, what I'm trying to get is how
19 Your Honor has said that, you know, Eddie might be interested
20 --

21 (Phone connection interrupted.)

22 -- in the ordinary practice of the IRS in terms of
23 handling applications. One of the aspects of handling is
24 centralization, treating things that are on a similar topic
25 similarly to each other, and that's what Rog 17 gets to.

1 Rog 11, which is the one that is listed under the IRS
2 metrics in plaintiffs' filing, that one is asking about, if
3 you're looking at issues of private benefit, private
4 inurement, what type of questions did you ask. And I think
5 that -- my point there is simply that the IRS doesn't have
6 available statistics on that. However, because Your Honor has
7 already basically ruled on the issue that, you know, we're
8 going to keep to the timeline of a class and we're going to
9 keep to the class members, well, then that narrows Rog 11 to
10 just the class members.

11 Here again, Eddie has the files, just like we do, and you
12 can go through the files and see what questions were asked.
13 The unnecessary questions, those are the seven that are in the
14 definition of the subclass. And so you can, quite easily,
15 just look at the questions and see are any of these the same
16 as the seven unnecessary questions. So in there --

17 THE COURT: Well, I would assume that the questions
18 of the class members would be fairly consistent. I guess the
19 question is, is that practice consistent with other IRS
20 inquiries.

21 MS. BECKERMAN: And we are not making a factual
22 argument, Your Honor, that because we asked this question to a
23 class member and to a nonclass member, that it's okay. With
24 that respect -- I think that might be Interrogatory 16 that we
25 answered on this issue. We're making a legal argument that

1 there are certain cases where the Court said that the type of
2 information that -- for example, asking whether someone on
3 your board is going to run for public office, that we believe
4 that in the *American Campaign Academy* case out of the tax
5 court, that the Court found that that type of information
6 might be relevant to determining tax-exempt status; and,
7 therefore, if a Court found a question could be relevant,
8 then, you know, we don't think it could be illegal for the IRS
9 to ask that question.

10 So we've given them these case cites. I think they're
11 familiar with our position on this issue. So we are not going
12 to be making any argument that because, you know, that
13 Question Number 1 was asked to a class member and to some --
14 and it was also asked a totally different type organization,
15 that makes it okay. We're definitely not going to be making
16 that argument at all. That's not our argument. We would just
17 be making an argument that Question Number 1 is okay because a
18 Court has said that type of information is relevant in the
19 situation. That's the difference there.

20 THE COURT: Eddie?

21 MR. GREIM: Your Honor, we're familiar with that
22 position. I mean it, you know -- I think this will make more
23 sense when it comes up at the hearing or at trial or in
24 summary judgment. The cases are not going to say that these
25 questions are okay in this, you know, in this situation or

1 that they're always okay or it's okay to do what the IRS did
2 here.

3 But they'll go as far as they go. We'll argue it at that
4 time. Our only point is, I think what you said several
5 minutes ago, which is that you can't say that it's typical to
6 ask all these private inurement and private benefit
7 development questions of groups like this, that that's what
8 they're precluded from doing. If they want to say that a
9 case, that it's always okay legally, then we'll argue about
10 whether the case said that.

11 THE COURT: Okay. I think that's where we are;
12 right?

13 MR. GREIM: I think so.

14 MS. BECKERMAN: We agree. I mean, we are not going
15 to be saying that these questions are okay because they're
16 always done; we're going to be saying they're okay because
17 case law says it's okay.

18 THE COURT: Okay. All right. So what's next? I
19 mean, I painted sort of a broad brush at the outset. Does
20 anybody have any specifics?

21 MR. GREIM: Your Honor, plaintiffs, we do. We'd just
22 take two of the other issues, and then I think we're kind of
23 -- I think that's all we would say.

24 On the relevant time period --

25 THE COURT: Yes, sir.

1 MR. GREIM: -- you know, the targeting -- there is a
2 class period, but that class period defines when the IRS used
3 these common targeting criteria to pull somebody into the
4 class. But that class period doesn't define when they were
5 actually going through the unauthorized inspections.

6 Now, you know, even if we were to limit our discovery to
7 just tell us what the unauthorized inspections were and we had
8 no other relevant questions, I mean, we're going to find
9 unauthorized inspections that happened to the, you know, class
10 that had been assembled by mid-2013. Later on in 2013 when
11 they stopped adding people to the class -- so we're outside
12 the quote, "class period" for purposes of deciding who's in it
13 -- but there's still bad things happening to those people in
14 the form of unauthorized inspections.

15 And so our only point is we can't just use the artificial
16 construct of when they started building membership of the
17 class and they stopped building the membership of the class to
18 apply to everything else. I mean, there's all kinds of other
19 conduct, you know, that is relevant here, like, for example,
20 being worried about Tea Party groups and e-mailing about that.
21 Well, that was before they first pulled somebody out
22 specifically to be in the class.

23 THE COURT: But Eddie, how much before, all the way
24 to 2006, which I think was what you were asking for?

25 MR. GREIM: Well, you know, on different requests we

1 asked back for different time periods. And so, I -- frankly,
2 I am embarrassed to say, I'm not sure which of our requests.
3 I could probably pull it up here. It goes back to '06.

4 But our point is simply: as far back as there are
5 responsive documents, they should produce them, and it can't
6 just be limited to the relevant time period.

7 THE COURT: Okay. I'm willing to show some
8 flexibility, but I'd like to pick some bookend dates on either
9 end so that it's not completely open-ended. How do we do
10 that?

11 MS. BECKERMAN: Sure. Your Honor, if I may address
12 that. So plaintiffs picked the class time period when they
13 did the class definition, and that time period starts with
14 when the first class member's application was received by the
15 IRS. And so the Complaint focuses on unlawful inspections of
16 the class member's tax return information, and so no unlawful
17 inspection could occur before that taxpayer submitted their
18 application to the IRS. And that date begins in January of
19 2010, which is, you know, extremely early. All the timelines,
20 that's actually -- usually the timelines pick up in mid-2010.

21 On the later date, the class time period goes through June
22 of 2013, which is actually about five weeks after the
23 Complaint was filed. The Complaint, I believe, was filed May
24 20th, 2013, and the class time period goes through the end of
25 June. And so, you know, if -- to the extent Eddie thinks that

1 there is something after his Complaint was filed, well, he
2 can't seek relief for something that didn't happen. You know,
3 it's not in the Complaint if it didn't happen until after he
4 filed the Complaint.

5 So, you know, I do think that we're talking about the
6 right time period. If you look at the timeline and the TIGTA
7 report, if you look at all the timelines we produced, the
8 Congressional report, this really is the time period that
9 everybody who looked at this agrees is the key time period at
10 issue.

11 And so, I mean, we think that that is -- that plaintiffs
12 picked this time period for a reason, because it's the time
13 period in the TIGTA report and the Congressional report, it is
14 the time period when these things happened that are at issue
15 in this case. So we think that when plaintiffs picked this
16 time period it made sense because of the facts of the case,
17 and it still makes sense today for purposes of discovery.

18 THE COURT: Anything else, Eddie?

19 MR. GREIM: Okay. Your Honor, first of all,
20 Mr. Martin --

21 Dane, help me out here.

22 The earlier dates were for the metrics-related questions,
23 which we've addressed elsewhere. But in terms of actual
24 e-mails about the Tea Party groups or about the targeting, we
25 would not -- I mean, there is no way there would even be

1 responsive documents back then. So I would be willing to go
2 to, say, June 30th of 2009 when Tea Party groups were starting
3 to form. So I would be willing to go back that far. There
4 may be nothing back there. I would do that.

5 The other thing is, there is -- you know, we saw, with the
6 Preliminary Injunction motion, there were many things
7 happening, I mean, with TPTP, for example, after the Complaint
8 was filed. The issue, again -- it's not just identifying what
9 the unlawful inspections were. I mean, I gave that as sort of
10 the, you know, sort of the extreme example; that, you know,
11 even if discovery were just limited to the inspections
12 themselves and not people's motivations for them and not the
13 tax administrative purpose for them, that we would at least
14 have to cover the period of the unauthorized inspections. But
15 there is no --

16 You know, we asked for injunctive relief in our Complaint.
17 We by no means have said that we think all the wrongful
18 conduct against the groups stopped when we filed our first
19 Amended Complaint. Of course, you know -- our initial
20 Complaint. We filed an Amended Complaint after that. Then we
21 saw, in the case of TPTP, what they were doing to people even
22 while the litigation was going on.

23 THE COURT: Well, how far beyond June 30th, 2013, do
24 you want to go?

25 MR. GREIM: Well, Your Honor, for TPTP we just got up

1 until September of last year. I mean, I would say if they
2 have responsive documents even today about, you know,
3 inspections of these groups for unauthorized purposes, we
4 should get those documents. Now, it may be that there are
5 none because they've stopped. That might be the answer. But
6 I just can't imagine that if Lois Lerner is e-mailing somebody
7 about, you know, why they targeted the Tea Party groups two
8 weeks after we filed our lawsuit, that that is not responsive
9 because it's post the date of filing.

10 MS. BECKERMAN: Your Honor, may I just address a
11 couple of things?

12 THE COURT: Yeah, please do. I'm with Joe. I think
13 we're going backwards. Go ahead.

14 MS. BECKERMAN: Sure. I think that Eddie is
15 conflating two different issues. There is the class claim,
16 and then there is a different claim that only pertains to
17 Texas Patriots Tea Party.

18 When plaintiffs have sent us a request for information
19 about Texas Patriots Tea Party that goes beyond the class time
20 period, because TPTP is by itself in the injunctive relief
21 claim, we've answered and we've given them stuff up to the
22 present about TPTP.

23 The class action claim is not for injunctive relief. It
24 is only for unlawful inspection. And so with regard to
25 documents about the class members, you know, we do believe

1 that the time period that is the class definition that
2 plaintiffs put forth and that the Court adopted is the correct
3 time period.

4 First of all, Lois Lerner was gone from the IRS by the end
5 of the class time period. So, absolutely, any documents that
6 she would have generated are within the class time period. Or
7 she was no longer working there. And we have given -- we
8 didn't just stop with the date of Complaint. We went through
9 the class time period, which is the end of June, 2013. So,
10 you know, there really has to be kind of a reasonable limit.

11 And to just take this also to the practical end, we have
12 reviewed an awful lot of documents in this case. When
13 plaintiff told us their objection about the timeline, which
14 was later on in the review, we did start tagging some
15 documents as being outside the timeline, but we did the vast
16 majority of our review, probably 75 percent of it, before we
17 knew that they wanted us to do that, and so we don't have it
18 tagged.

19 So what plaintiffs are asking requires us to do an awful
20 lot of work over, and especially -- I mean, Eddie just said
21 that he doesn't know whether there is anything before January
22 of 2010. He said maybe June, he doesn't know. So what we're
23 really talking about is having the government to do an awful
24 lot of work over for what is, at best, a fishing expedition.

25 THE COURT: All right. Let me chew on that one,

1 guys. What's next?

2 MR. GREIM: The other governmental agencies, Your
3 Honor -- you know, we listed three in here based on specific
4 communications. I'm going to let Mr. Martin quickly run
5 through that one.

6 THE COURT: Great. Thanks.

7 MR. MARTIN: Your Honor, so what made us -- and I
8 think our requests have gone to this as well. What we are
9 certainly interested on as far as specificity was that there
10 were some conversations between Miss Lerner and members of the
11 FEC and the DOJ regarding the use of sworn representations
12 made by Tea Party groups in applying for tax-exempt status
13 against them in enforcement proceedings. And the reason that
14 we're very interested in that is that there's other
15 indications that we've seen that the -- some of the reasons
16 that some of the unnecessary requests were asked and some of
17 the development occurred was specifically to get
18 representations by these groups.

19 We also have this expedited processing that was sent out
20 to class members. I think that's after the class period, so
21 after they were formed as part of the class, they then
22 received this expedited processing.

23 And one argument that we have made and intend to make is
24 that that actually requested entities to swear under oath that
25 they would engage in certain activities that were more onerous

1 -- or that they would comply to standards that were more
2 onerous than required by the exemption standards.

3 So, for us, the effort to acquire sworn statements and the
4 communications with members of the FEC and DOJ about these
5 sworn statements is a good indicator of what the purpose was
6 for these requests and, thereafter, the purpose for the
7 ultimate inspection of that information.

8 THE COURT: Well, I guess I would ask: How do you
9 know this if you haven't seen the e-mails?

10 It sounds like you've already got the info, don't you?

11 MR. MARTIN: We do because -- well, we do -- for the
12 e-mails we know about, we do. But -- so we have the e-mails
13 from Miss Lerner to, I think, a member of the FEC. I think
14 Miss Lerner referenced something about DOJ officials. I think
15 that that e-mail was produced to, I'm going to say, Judicial
16 Watch in a FOIA request. The challenge is that that e-mail is
17 redacted in part. Also, I think that we want to know the full
18 story on that. And the fact that we encountered a single
19 e-mail on that topic, it doesn't really give us any
20 information about how far the IRS went to actually, you know,
21 fulfill that plan, if it was a plan, did that -- did they
22 actually take steps to complete it.

23 Those are some of the base questions that we wanted to get
24 to when asking if the IRS and the DOJ or the FEC talked about
25 the Tea Party cases.

1 THE COURT: Okay. A couple of quick observations.
2 Okay. One of the things I said was, if you had a specific
3 item which looks like it bore further inquiry, I would
4 certainly consider whether or not to permit that. But I
5 thought in our last phone conversation we talked about this.
6 I thought Laura said there's no reason to go to the other
7 agencies because if there was communication, it would have
8 been in our files which we've already produced.

9 So I'm kind of wondering if I'm missing something here.
10 At least I think she said that. I haven't read the
11 transcript, but I thought I heard that.

12 MR. MARTIN: Your Honor --

13 MS. BECKERMAN: Your Honor, that is what we said.
14 And I just want to reiterate that we -- the government is not
15 withholding any documents in response to any of the searches
16 where they asked for communication, for example, between the
17 IRS and Treasury. We produced all the documents, and we
18 believe that, really, the bottom line is that if there is a
19 communication between the IRS and another agency, then it will
20 necessarily also be housed at the IRS.

21 I do want to address some of the examples that they used
22 --

23 THE COURT: Well, hang on one second. Let me ask you
24 a question. From what I understand they just said was, is
25 they didn't get this document from you guys, it was obtained

1 by somebody else through a FOIA request and was not produced.

2 MS. BECKERMAN: I don't believe that they said that.
3 I mean, we don't know what -- if they've asked us for a copy
4 of this document, then we will give them a copy of this
5 document.

6 THE COURT: I mean, I'd kind of like to see the
7 document itself so I can figure out what the situation is
8 exactly. But go ahead, Laura. I interrupted. I'm sorry.

9 MS. BECKERMAN: My colleagues are telling me that
10 this document is attached to the plaintiffs' motion as Exhibit
11 H.

12 THE COURT: Hang on.

13 MS. BECKERMAN: So that would be Docket 319-8.

14 THE COURT: Hang on a second. My pile is ever
15 growing here.

16 MS. BECKERMAN: Sure.

17 THE COURT: What's the page number?

18 MS. ROYALTY: It's a docket entry.

19 MS. BECKERMAN: It's Page ID 10660.

20 THE COURT: 106 -- wait a minute. It's attached to
21 theirs; right?

22 COURTROOM DEPUTY: 319.

23 THE COURT: Let me find 319. Sorry.

24 (Pause in proceedings.)

25 THE COURT: What page on 319?

1 MS. BECKERMAN: It's Page ID 10660.

2 THE COURT: 106.

3 MS. ROYALTY: It would be attached to that. You
4 might not have that.

5 THE COURT: I may not have that.

6 MS. ROYALTY: Let me grab it.

7 THE COURT: We didn't print the attachment. Just
8 tell me what we're talking about.

9 MS. BECKERMAN: Sure. Well, Your Honor, in this
10 section of their brief, plaintiffs cite the two exhibits,
11 Exhibits G and H. Exhibit G is a page from the House
12 Oversight and Government Reform Report about the Tea Party
13 advocacy cases. In there, they cite to an interview and to an
14 e-mail. The e-mail that they are citing to is in support of
15 their argument that they need discovery outside of the IRS.

16 Well, I was able to find that e-mail. We produced it.
17 It's Bates number 41928, if plaintiffs want to look for it.
18 So we produced that e-mail.

19 Exhibit H is an actual copy of an e-mail. And I don't
20 know if this is the e-mail that Dane was talking about, but it
21 is not an e-mail to the FEC. It's an internal IRS e-mail
22 where Lois Lerner says, quote, "As I mentioned yesterday,
23 there are several groups of folks from the FEC world that are
24 pushing tax fraud prosecution for c4s who they report are not
25 conducting political activity when they are (or these folks

1 think they are). One is my ex-boss, Larry Noble, former
2 General Counsel at the FEC, who is now president of Americans
3 for Campaign Reform. This is their latest push to shut these
4 down. One IRS prosecution would make an impact and they
5 wouldn't feel so comfortable doing the stuff."

6 So, you know, we produced all the e-mails to and from an
7 FEC e-mail address. That was one of their requests for
8 production that we have already produced all the documents.
9 Here is an example of a document that is internal.

10 So we still don't have any examples of any documents that
11 would give us any evidence that there are documents -- there's
12 reason to look at agencies outside the IRS. They, once again
13 --

14 THE COURT: I mean, not that I would expect you to
15 know, but do you know if -- were there any e-mails between her
16 and Larry Noble that were produced or discovered or anything
17 like that?

18 MS. BECKERMAN: We -- I know that one of the
19 discovery requests asked for a very broad request of all
20 e-mails to and from Lois Lerner, work and personal accounts,
21 and we produced those. I don't know if there were any e-mails
22 to this particular person.

23 THE COURT: Okay.

24 MS. BECKERMAN: But this e-mail here, it's not
25 referencing it in other e-mails, but I think it's talking

1 about --

2 THE COURT: Oh, no, no. I get it. I understand that
3 part, but it does sound like there was some communication.
4 I'm just wondering if there's any way to know what the form of
5 the communication was.

6 Let me switch back to Eddie and Dane. So, I mean, what do
7 you think, fellas?

8 MR. GREIM: Your Honor, I would just -- you know, if
9 they're saying they've really produced all of it, then, you
10 know, again, we can't -- it's kind of hard to disagree with
11 them without knowing more. The Bates number they've mentioned
12 is a later one in the 41,000. So if that was in the last
13 tranche, or even a month or so ago, we may still be getting to
14 that as we -- you know, we're doing our own kind of review to
15 get ready for depositions that are happening as we're going
16 here.

17 I would say this also, Your Honor. Earlier in that same
18 exhibit there is an e-mail from Lois Lerner to Nikole Flax
19 saying about a call she got from Richard Pilger, Director of
20 Election Crimes Branch at DOJ, talking about some of the same
21 idea of going after these people.

22 And so I don't -- I'm not here to say that I know of
23 documents, e-mails between Lois Lerner and DOJ or FEC or Larry
24 Noble, even, that have not been produced. I just want to know
25 that if they exist, they will be produced.

1 MS. BECKERMAN: Your Honor, we do disagree with the
2 characterization of the documents that Eddie made about that
3 these -- talking about going after groups. But I think that
4 the larger point is that we have -- there is no evidence that
5 there's documents out there that are relevant that aren't also
6 housed at the IRS. In fact, we are seeing evidence of the
7 fact that these are IRS e-mails on this issue. And if someone
8 at the IRS is going to e-mail someone outside the IRS --

9 THE COURT: Time out, Laura. I'm just going to let
10 the issue sit. It seems to me that the IRS has done what the
11 IRS is supposed to do. If you guys take some of these e-mails
12 and say -- I forget the guy's name you just mentioned at DOJ.
13 But if you want to drop a subpoena on this person to find out
14 about their contacts and stuff like that, then we'll talk
15 about whether or not that effort gets supported.

16 So you guys figure out -- you guys put together what you
17 want to do with this stuff and what information you want to
18 try to gather, and we'll figure out what the best way to do it
19 is.

20 MR. GREIM: Your Honor, we'll do that. I mean, at
21 the end of the day it may be that they say they've produced it
22 all, and that's it. And, I'm sorry, I hate to use precious
23 time, but I've got to say -- I'm looking at this e-mail more
24 closely, and I agree with Laura. This is not about Pilger
25 going after the groups; it's about getting testimony before a

1 senator who wanted to know about crimes of these folks. So I
2 did mischaracterize it, and I don't want it to sit in the
3 transcript like I said it before.

4 THE COURT: No, that's okay. And part of the issue
5 is you're still getting recent production, so we're not quite
6 there yet. So let's move on to something else while there's
7 still daylight outside.

8 MR. GREIM: Okay. Your Honor, we have some other
9 things on the agenda that weren't part of your first
10 run-through, but some of these we can -- I tell you what,
11 here's one thing we should do.

12 THE COURT: Yes.

13 MR. GREIM: *Bivens* deposition issue. I'm pleased to
14 tell you it is all -- with two exceptions, it is probably
15 going to be done.

16 THE COURT: All right.

17 MR. GREIM: We have spoken with counsel for the
18 line-level folks. I think Eric Nitz is on the call from them.
19 In exchange for being able to take these without the
20 confidentiality designation and getting rid of the old
21 confidentiality designations on the old class discovery
22 depositions, we are going to release our *Bivens* claims against
23 them. So that --

24 THE COURT: Okay. Well, if you guys tell me you've
25 got something under control, that's fine. If the under

1 control falls apart, just bring it to my attention. So that's
2 good. All right.

3 MR. GREIM: Okay. One more forecast for you. I
4 mentioned there were two exceptions with the management level
5 folks, and here's what we may -- we probably will, I should be
6 bringing to you. We may have a similar deal there with the
7 exception that two of the higher-ups -- and I guess I won't
8 name them until we have to --

9 THE COURT: All right.

10 MR. GREIM: -- do not agree -- that -- they want to
11 raise an additional issue with making these public. They, I
12 think, will argue harassment, that there is a possibility of
13 harassment by private individuals if the contents of their
14 testimony becomes known.

15 And so our hope, Your Honor, will be to tee that issue up
16 for you as quickly as possible and then have a decision so
17 that by the time we take their depositions, which might well
18 be later on in May, we will know whether they are to be under
19 seal or not, you know --

20 THE COURT: Okay.

21 MR. GREIM: -- based on whether the harassment
22 concern is just cause for keeping them under seal.

23 THE COURT: Right.

24 MS. BENITEZ: And, Your Honor, this is Brigida
25 Benitez. And I don't want to take up more time in this

1 hearing, but I represent the management level defendants.

2 As Eddie just represented, I mean, we've reached agreement
3 with all of them. I have 11 clients, and all but two -- but
4 these are the -- and I'm happy to name them because I think
5 that's important. The highest profile, Lois Lerner and Holly
6 Paz, are two individuals who were subjected to pretty extreme
7 harassment, you know, following a lot of the press accounts.
8 A lot of the statements and things were put on *Fox News* and
9 every press outlet. They've received death threats. They had
10 to get protection from the IRS. Ms. Paz's son was harassed
11 and was chased from the school bus. I mean, there were really
12 some nasty things that happened, and they are very concerned
13 about having this testimony be public and having this all
14 start.

15 So we are happy to, as I've told Eddie, make them
16 available for deposition, work with him to schedule them --
17 That's not at all an issue.

18 -- and, certainly, on my other clients to do the same.
19 But for the two of them, we will be submitting a Motion for
20 Protective Order and provide Your Honor with that evidence so
21 that you could see for yourself the level of harassment
22 they've endured and, I think, does not deprive Eddie of having
23 the testimony for, you know, his purposes in this litigation.

24 THE COURT: Okay. Well, I think we're just teeing up
25 the argument now and not making it; right?

1 MS. BENITEZ: Yes, that's correct.

2 THE COURT: Okay. Good.

3 So what else then, guys?

4 MS. BECKERMAN: Your Honor, the government has the
5 issue that it brought to the Court on its Motion to Compel,
6 which is identifying the documents responsive to the specific
7 requests. So in Document Request Numbers 2, 3, 4 and 5, in
8 response to each of these, the plaintiffs responded by citing
9 the entire production to date, which is, I think, about 13,000
10 pages of documents. I mean, we believe that the rules require
11 them to cite with a bit more specificity much in the way we
12 did. When a request asked for timeline, we cited a timeline
13 section. Likewise, we believe that they should be doing the
14 same and that that will better enable us to understand what
15 documents are responsive to his request.

16 THE COURT: I thought we kind of touched on that a
17 couple of phone calls ago, and Eddie said that he was working
18 on a target date by what time he would, you know, give you
19 damages, give you what are the alleged improper inspections
20 and all that kind of stuff. I mean, if you needed more time
21 to follow up, we would do that, but maybe I'm wrong again.

22 MR. GREIM: Your Honor, our -- that's right. The
23 only thing I'd say is, there is a slightly different issue
24 here. There's really two parts of it. One is, when we
25 identify -- you know, we answered their inspections issue as

1 part of the roadmap, but there is a separate document request
2 where they want us to -- because they've asked us to produce
3 all documents showing that, for example, that their
4 inspections were unauthorized. And, of course, we don't have
5 any documents of our own about this. It's the IRS documents.

6 But we did -- like, our production, for example, in this
7 case, Your Honor, was surfing the internet, pulling the TIGTA
8 report, pulling the Congressional reports, and pulling the
9 things that we thought were most important out of the great,
10 much larger mass that's out there publicly available and
11 producing that to them. So the IRS wants us --

12 THE COURT: No, I -- time out. I thought we had
13 already had this conversation, and I said I understand that,
14 and you said but once you get through your discovery and
15 you're able to identify what you're talking about from the
16 documents the IRS is producing, you'll let them know what
17 you're going to use; right? Am I --

18 MS. BECKERMAN: That would be fine with --

19 MR. GREIM: Yes, Your Honor, we can do that. I just
20 would say, it's going to be a little -- it's going to be in
21 the nature of more of an exhibit list at that point, but we
22 can do that. I mean, we will. I just -- I -- we may still
23 have a rather large range of documents. If they want to know,
24 you know, all documents that show that the inspections were
25 enough for a lawful tax administration purpose, it's going to

1 be much of the TIGTA report because it's going to outline the
2 motivation. But we'll do that. I mean, I still think there
3 will be large chunks.

4 Now, on identifying the inspections, Your Honor, that will
5 be very targeted because that will be specific for each group.
6 It will point to each wave that they were subjected to.

7 THE COURT: Well, all I care about is the government
8 having adequate time to prepare for what's coming at them
9 depending on what you've got lined up to fire their way.
10 That's all.

11 MR. GREIM: And, Your Honor, I think we'll be able to
12 do that. My thought was -- not to circle back to the roadmap,
13 but if they've got their stuff to us --

14 THE COURT: I love the roadmap, Eddie.

15 MR. GREIM: Okay. Thank you. I'll have to start
16 using that more often in other --

17 THE COURT: Yeah.

18 MR. GREIM: But if we have a very quick meeting,
19 confer -- and, you know, some amendment will have to occur on
20 their inspection stuff back to us. If that happens by April
21 21 -- before we said the 14th, and I moved it to the 21st
22 now -- we would get back to them by May 8th. Before we said
23 May 1, and now I'd say May 8th. And then we'll go into our
24 final gasp of D.C. depositions. Those will be done by May
25 25th. We would give them our update based on those

1 depositions still, I think, on June 1, maybe the end of that
2 week, June 5.

3 MS. BECKERMAN: Your Honor, Eddie seems to have taken
4 us back to the idea that the government hasn't produced enough
5 information for them. I mean, of course we're going to get
6 together with them and see if there is any other small
7 targeted searches that we could reasonably do, and quickly.
8 But, other than that, I didn't understand that the Court had
9 ordered us to produce anything more. In fact, I thought the
10 Court had reflected that our interrogatory responses were very
11 thorough.

12 THE COURT: Well, I did. I've got a couple of issues
13 hanging. One is that we have to talk about the period of
14 production on the one issue, and I haven't finally decided
15 that. I want to chew on that a little bit. Other than that,
16 what I've said was I thought your production stuff was
17 thorough, but I've also understood from this conversation that
18 not everything has been reviewed. But there is a difference
19 between thorough and complete, so I just want to make sure we
20 close the loop and get that squared away. Okay?

21 MS. BECKERMAN: Of course. That makes sense. Thank
22 you.

23 THE COURT: Yeah. Another thing, one issue which has
24 been hanging is the concept of -- and, like I said, I'm not
25 holding anybody's feet to the fire on this. There was the

1 concept of not having a dual process of summary judgment
2 potentially followed by a bench trial, but putting the whole
3 ball of wax together, legal arguments, factual arguments and
4 all that stuff and moving towards completion in that manner.
5 I think Eddie said his group was generally on board with that,
6 and I think, Laura, you said you had to check. I don't have
7 to have an answer on that, but I'm just kind of curious if
8 there's any discussion on that.

9 MS. BECKERMAN: Your Honor, we did discuss it. We
10 ran it up our supervisorial chain, and we can't waive the
11 right to file summary judgment. And also, really on a
12 practical level, many of the issues that we would be
13 addressing in summary judgment are primarily legal issues,
14 which we would be happy to discuss and -- for example, you
15 know, whether applications for tax-exempt status are return
16 information given the Sixth Circuit's ruling on Mandamus, what
17 the meaning of tax administration purpose is --

18 THE COURT: Don't forget. Kethledge's quote, I
19 think, was something like those regulations are to protect the
20 taxpayer and not the IRS, if I remember right. So just
21 remember that. Didn't he say that?

22 MS. BECKERMAN: Well, he said --

23 THE COURT: He said a lot, he said a lot, but he did
24 throw that in there. Okay. I'm just saying, you guys have
25 your legal issues, and we'll look at it as we come down the

1 road. Okay? All right. But, you know, if you can't do it,
2 you can't do it. That's fine.

3 MS. BECKERMAN: Yeah.

4 THE COURT: Yeah.

5 MS. BECKERMAN: Unfortunately, we can't forego the
6 summary judgment.

7 THE COURT: Okay.

8 MR. GREIM: Your Honor, my only point would be that I
9 know what these legal issues are going to be and, frankly,
10 they could go in a trial brief. I mean, they -- but I'm
11 afraid what's going to happen is, with summary judgment we'd
12 get a race to the bottom because, you know, the legal issues
13 get teed up, then there's lots -- even if you tried it, you
14 start off with the idea of a very streamlined, you know, that
15 it's either return information or it's not. You do that, and
16 pretty soon you're raising a few other issues too, and now
17 we're trying our case --

18 THE COURT: Oh, no, Eddie, I'm totally with you on
19 that. I understand it. That's why I made the suggestion.
20 Because in Proposed Findings of Facts and Conclusions of Law,
21 you can flesh out every legal issue you would have fleshed out
22 in a summary judgment motion. But if the boss says don't do
23 it, there's not much Laura can do.

24 MR. GREIM: Fair enough. Far be it from me to
25 question Laura's boss. But I would -- while we're on this,

1 there is the TPTP issue. We think that is fully briefed. The
2 question there was once Your Honor ordered injunctive relief
3 in the fall, what exactly did that mean in practice for
4 finishing the processing of TPTP and --

5 THE COURT: Boy, you got me.

6 Come on, lighten up, guys. Lighten up. I'm getting a
7 little punch drunk. It's the end of the day here.

8 MR. GREIM: Oh, we had a barbecue for lunch, and
9 we're getting kind of dizzy on our end.

10 THE COURT: I am looking so forward to seeing you
11 guys in trial. I'm going to predict right now the sidebars
12 last as long as the presentation --

13 MS. ROYALTY: No, it's a bench trial.

14 THE COURT: Oh, it's a bench trial, that's right.
15 Still -- well, so there really shouldn't be a sidebar, should
16 there.

17 MS. ROYALTY: You could still have them if you want
18 them.

19 THE COURT: Let's have an advisory jury watch the
20 case and see what they say. Wow.

21 I'm sorry. Go ahead. I digressed.

22 MR. GREIM: Your Honor, there is one other -- so I
23 just raised TPTP. I mean, we can talk about this with Joe and
24 Laura --

25 THE COURT: Eddie, Finney will tell you I go off on

1 tangents all the time.

2 MR. GREIM: He's never told us that.

3 THE COURT: Okay.

4 MR. GREIM: He has never told us that. He should
5 have, though.

6 But on TPTP, Your Honor, we just -- that is an issue
7 that's been briefed. You know, everyone has attached their
8 exhibits. Even though it's preliminary injunction, I think
9 you could -- you know, I think it is ready to be decided,
10 especially, you know, if there was any thought that if we had
11 an early bench trial, we could just take it up then. If that
12 doesn't happen, then it would seem -- you know, we'd like to
13 get that rolling just in case Your Honor decides that TPTP has
14 to produce documents up to the minute, you know. Then all
15 this time they need to be still submitting documents for the
16 processing, and so it does matter to them.

17 THE COURT: Laura, there is another talking point to
18 discuss with the boss.

19 MR. GANAHL: Your Honor, this is Joe. I think I
20 could maybe, hopefully, fix this right now. So TPTP, the
21 issue with TPTP is, where we last left it, to remind the
22 Court, there was an injunction granted for them to be
23 processed in the ordinary course.

24 THE COURT: Right.

25 MR. GANAHL: The ordinary course, they were looking

1 at the entire existence of the organization, and then they had
2 sent some questions to TPTP that covered the entire time
3 period. So time has passed. At the time, the Service wanted
4 us to adamantly fight that, you know, it's -- they should be
5 processed like everyone else. Essentially, plaintiffs came
6 back, we're asking for special treatment. In the course of
7 this, briefing and in discovery, we've given them all of the
8 files that taxpayers normally don't have access to. So
9 plaintiffs have access to everything the Service was looking
10 at, all of their concerns they were looking at. We even
11 waived -- they called into question attorney-client, so they
12 have all of our attorney-client work product.

13 I have confirmed with the Service that they are willing to
14 withdraw the questions and only look at the early years of
15 TPTP to make a determination. If that resolves the issue,
16 that gives us special treatment. And, to go even further,
17 TPTP, we can set the time here, can submit anything they want
18 to the IRS to make a determination, and now they have the --
19 to use the word, they have the roadmap of what the Service was
20 looking at, what concerns they have, they had the draft
21 denial, they have the questions of what the Service was
22 examining. So TPTP could be in a very good position to submit
23 information that the Service would need to process their
24 application.

25 And then, once the Service rules on that -- and it's a

1 little complicated, but Judge Dlott's ruling on the Motion for
2 Summary Judgment -- I'm sorry, Motion to Dismiss, made clear
3 that anyone with, you know, Count 2 only was for people with a
4 pending application. So then rather than have a trial, Count
5 2 could would go completely away, and it would help my client
6 because TPTP is the only person left that hasn't been acted on
7 in any way.

8 As the Court may be aware, there is a little publicity
9 surrounding this and a little bit of Congressional inquiry, so
10 it would be very good that they resolve all of the outstanding
11 applications.

12 THE COURT: Joe, I instructed myself at the outset of
13 this case not to watch media reports, tweets, blogs, stories,
14 news reports or anything like that, so I'm in the dark.

15 But Joe, what do you say --

16 Or Eddie, what do you say to what Joe just said?

17 MR. GREIM: Well, I -- it's not a lot different from
18 different things we've heard from the IRS. We talked about
19 this the other day, and I don't know if what he said here is
20 anything different. I --

21 But here's the problem, Your Honor. We think there should
22 be a clear decision that if TPTP answers what the IRS had
23 identified in 2013 as what was still necessary before they got
24 caught up in all this, then that ought to be enough. And what
25 worries me a little bit is this idea that --

1 And I'd really love to get into details here. This call
2 may not be the time for it.

3 -- but this idea that we can look through and we can try
4 to guess what the IRS thought was important. Because,
5 remember, in succeeding years they kept looking back at the
6 file again and kept thinking of new things.

7 So I'm not sure which standard -- we want the Court to
8 make a clear decision, and I'm afraid that if we leave it wide
9 open and just say, "Taxpayer, you give us what you think we
10 need," that's a game that we're not going to win.

11 THE COURT: I thought Joe said he was willing to cut
12 it off at 2013, or not?

13 MR. GANAHL: That's what I said, Your Honor. We've
14 given plaintiffs everything they've asked for. We just want
15 it to go away. This Count 2 will go away once they get a
16 ruling, and now it's, you know -- for the Court and for us.

17 MR. GREIM: Okay. The only good thing I'd say is
18 that the IRS previously said that they would deny us based on
19 2013, and so I hope it's -- you know, I guess I'll just say
20 this. I would like to talk to Joe and Laura offline about
21 this going back to 2013 idea. Because, if I'm hearing them
22 right, this might be something brand new, but it would have to
23 be what we asked for in this case. I just want to be very
24 sure that it is.

25 THE COURT: Okay. Well, you guys talk about that

1 offline, but it does --

2 MR. GANAHL: Your Honor, can I just address
3 something?

4 THE COURT: Sure.

5 MR. GANAHL: I don't know if it would be a denial
6 because I don't know what they would submit. I do know, and
7 it's clear from where we stand right now, that there was a
8 proposed denial drafted and there's a bunch of other things.
9 But the point is, if Mr. Greim is -- if Eddie is asking for
10 the Court to order an approval, that's clearly the
11 anti-injunction -- there is no jurisdiction here. That would
12 be a different cause of action.

13 I thought it was the process, and he said -- one of the
14 arguments was you need to look at the earlier years, which we
15 agreed to do.

16 THE COURT: Okay.

17 MR. GANAHL: I said he could answer anything he
18 wanted. So if he wanted to answer those early questions
19 tendered, he could answer those early questions.

20 THE COURT: Why don't you guys kick that around?
21 We'll talk about that in the next phone call, because I'm sure
22 we're going to have several. But it does bring up an
23 interesting question. Has anybody ever discussed that evil
24 word "settlement" at any point in this process? Is there any
25 --

1 MS. BECKERMAN: Your Honor, we have mentioned to
2 Mr. Greim that we're very happy to listen to any reasonable
3 settlement offers. We'd be happy to sit down and have a
4 settlement conference. I had mentioned that a couple of
5 times. Any time -- the one problem we have is that Eddie
6 hasn't given us an actual number for damages. He's given us a
7 range, anywhere from 1,000 to 10,000 per plaintiff. But if
8 Eddie was able to give us a number, we would be very happy to
9 sit down and talk settlement.

10 MR. GANAHL: And, Your Honor, there is a practical
11 concern of us bringing up settlement and a number, and that is
12 we're not allowed to make settlement offers. I mean, it's
13 just -- it's our rulings. But, as Laura mentioned, we are
14 more than willing to discuss it and are willing to discuss it.

15 MR. GREIM: Well, Your Honor --

16 THE COURT: Hang on.

17 MR. GREIM: -- I'm glad to hear that.

18 THE COURT: Hang on.

19 So Joe, you're telling me what the rule is, is you guys
20 can't throw something out but you can respond to whatever
21 Eddie puts on the table?

22 MR. GANAHL: Right. We can have a full -- what we
23 put in a million letters, because usually what happens is when
24 you're a normal trial attorney, someone makes an offer, and
25 you say, "No, but I could recommend this," and then they come

1 back and go, "Counterclaim. Counteroffer accepted."

2 What we are allowed to have is a full and frank
3 discussion. And then what happens from us is, the trial team
4 makes a recommendation to the chief of the section. Then,
5 depending on the number, it could go to the Office of Review,
6 which is, I think, over two million -- or over a million. And
7 then if it's over a certain amount, the Joint Committee has to
8 be --

9 THE COURT: All right. So we deal with this every
10 day in cases where the County Prosecutor's Office is -- we
11 have a settlement discussion, but they're bound by saying, "At
12 the end of the day, we've got to take this to the County
13 Commissioners and they can up or down it." Right? Same deal?

14 MR. GANAHL: Yes, very similar.

15 THE COURT: Okay. All right.

16 MR. GANAHL: But whatever discussions we would have,
17 we would certainly have everyone involved in the discussion on
18 our side.

19 THE COURT: How do we get that conversation teed up?
20 That's the kind of thing I love doing, but if it's a bench
21 trial, that might be problematic and might have to pawn that
22 off to somebody else. How do we get this teed up, Joe?

23 MR. GANAHL: I actually think if Eddie had -- I mean,
24 he could start the ball rolling if he had an amount in -- I
25 mean, to be fair, we can't even figure out, really, what he is

1 asking for in this case. That partly comes from the fact that
2 the damages are per inspection and we don't have --

3 THE COURT: Well, maybe I have to ask the question of
4 Eddie then.

5 Eddie, how do we get this teed up?

6 MR. GREIM: Well, Your Honor, frankly, this is the
7 first time that we've heard from the IRS about the idea that
8 they are not able to give us a number, that we must start.
9 But we'll start. We're happy to do that. You know, it is
10 true -- in fact, it kind of caught us off guard a little bit.
11 Maybe three or four weeks ago in a discussion on discovery, I
12 think it was Laura that kind of mentioned offhand "We're happy
13 to take any reasonable settlement offer," and it struck me
14 that -- I believe I had not heard that until then. It was
15 sort of not exactly on topic --

16 THE COURT: Oh, that's --

17 MR. GREIM: -- but when you're a plaintiff, you file
18 that away and you want to return to that.

19 THE COURT: Yeah. You know, I don't care about the
20 history of discussions. I guess my question is: Moving
21 forward, how do we get it teed up, from your perspective?

22 MR. GREIM: Your Honor, what we'd like to do is -- I
23 mean, I badly would like to get to what I think we must be
24 missing here in discovery. I mean, there are some key people
25 that we did not take for class discovery. I mean, I think

1 their testimony, when they are finally confronted with some of
2 these documents, will inform us. It will make a difference in
3 what we do.

4 THE COURT: Okay.

5 MR. GREIM: We're very close to being done. We are
6 scheduling depositions.

7 THE COURT: All right. So we're not ready yet, but
8 at some point we can reengage possibly on that topic; right?

9 MR. GREIM: Yes. Yeah, we definitely can.

10 THE COURT: Okay.

11 MR. GANAHL: I'm sorry, Your Honor. I was passed a
12 note which said "He is asking about mediation, you moron,"
13 which is not you, Your Honor, it's me. If that is the
14 question of whether the government would be open to settlement
15 mediation or a settlement discussion in front of a magistrate,
16 the government is not -- a settlement conference, the
17 government is not opposed to that, Your Honor.

18 THE COURT: Okay.

19 MR. GANAHL: I think that, in hindsight, I think
20 that's what you were asking me.

21 THE COURT: Yeah. I mean, unless -- when there is a
22 bench trial, unless both parties say, "No, Judge, we want you
23 to do it," I usually ask one of my colleagues to handle the
24 settlement discussion, whether it's another DJ or one of the
25 two MJs, or even drag in a DJ from Columbus or Dayton that

1 would be willing to do it, because I know everybody wants to
2 spend time with you all.

3 But if you guys -- you know, if you guys think in the
4 settlement discussions we can broach topics that will not
5 affect, you know, my decision if I ultimately have to decide
6 the case, I'm happy to do it. But if you think that's really
7 problematic, I hundred percent get that. So is that something
8 internally both sides can kick around and talk about?

9 MS. BECKERMAN: Your Honor, I can tell you, it is
10 just a policy of our office that if it's a bench trial, we're
11 required to ask for a different judge or a magistrate judge to
12 be a mediator.

13 THE COURT: But, Laura, policy is more like
14 guidelines, isn't it?

15 (Laughter.)

16 MS. BECKERMAN: Well, you know. I know that if I
17 asked my supervisor, that is what he will tell me. But yes,
18 we would be very happy to schedule a mediation conference with
19 a judge.

20 THE COURT: Okay. All right. Well, let's -- we'll
21 visit that when Eddie thinks he is ready. Is that okay? Is
22 that fair enough?

23 MR. GREIM: That's fair, Your Honor.

24 THE COURT: Okay. What else do we have on this call?

25 MR. GREIM: "IRS audits of class members during or

1 after the application process," item number 7.

2 MS. BECKERMAN: Well, Your Honor, it's -- I kind of
3 thought that that was taken care of when we were talking about
4 the time period because --

5 THE COURT: Yeah. I haven't finally decided on that.
6 Can we leave that one alone temporarily, or not?

7 MR. GREIM: Your Honor, we're fine leaving it alone.
8 I think we've made our point in our filings.

9 THE COURT: Okay.

10 MS. BECKERMAN: Yeah. I mean, our only point would
11 be that we have not actually heard of any suggestion or any
12 evidence that there are any audits at all. I have no reason
13 to believe that there were any audits of the class members.
14 These people are Eddie's clients, so presumably he could
15 contact them or send them a questionnaire and ask, "Have you
16 been audited?"

17 And without any suggestions of any audits, I mean, we just
18 really think it's very far afield because the Complaint is
19 about the application process which is separate and distinct
20 from the audit process. So there is nothing about audits at
21 all in the Complaint.

22 THE COURT: Eddie, that's a good point. Can you
23 query your folks to see if there is a dog to chase on that
24 one?

25 MR. GREIM: Your Honor, let me be clear, though.

1 We're not suing for damages for people that experienced
2 audits. Our issue is were they -- in their review as they
3 were going through the process, were they --

4 THE COURT: Were they -- was that a targeting
5 technique. I get it.

6 MR. GREIM: Right. And so let's say they never did
7 end up auditing somebody. It's still extremely relevant if
8 they were saying, "Well, we can get these people on
9 audit." We might actually see that an audit occurred during
10 that time, which would show, you know, further inspection.
11 But, frankly, they're inspecting the file to decide whether to
12 do an audit.

13 I agree, we're not suing for wrongful audit or something.
14 We've said that from the very start. So a query of all the
15 class members of whether they were audited doesn't get us very
16 far. I mean, there could be some people who were just audited
17 just because, randomly. We don't care about that. We care
18 about their discussions, their plans to audit or to refer them
19 for other examinations that fell short of an audit. That is
20 our key, and that's all we want to know about.

21 THE COURT: All right. That was interrogatory, what,
22 seven?

23 MR. GREIM: Seven, Your Honor.

24 MS. BECKERMAN: Your Honor, just to clarify? So when
25 Eddie talks about being referred for an audit, I think what

1 he's talking about is a referral to the Review of Operations
2 Unit, which ceased existing a couple of years ago. But all of
3 those referral papers are in the file. There was a specific
4 document request about that, and so we answered with respect
5 to that. We've pointed them to the files and showed them the
6 type of documents that they did.

7 So, once again, if there is any discussion about referring
8 an entity to Review of Operations, which is not a referral for
9 audit, but I think that's what he's talking about, then that
10 is in the file.

11 Audits are not a secret process. If an entity is audited
12 or selected for audit, they get a letter notifying them. So
13 there wouldn't be some secret audit of any entity. The entity
14 would be able to tell you if they got a notice that they were
15 being audited.

16 MR. GREIM: Your Honor, everything she said is right.
17 Our issue, though, still is that people are discussing it,
18 making plans to do it. We want to know about it. I mean, it
19 may not lead to the letter. And I used the word "referral."
20 I was trying to refer to several things at once. Review of
21 Operations is something they used to have. They don't call it
22 that anymore. I don't know that we've been told that they
23 don't do anything short of an audit. You know, they no longer
24 have something called a Review of Operations and no longer
25 have a separate group that does it.

1 Look, we would just like to have the documents if they're
2 talking about doing it and making plans to do it. That
3 wouldn't be just it slipped into their file.

4 MS. BECKERMAN: Your Honor, Interrogatory 7 is an
5 interrogatory, not a document request. It asks for
6 identification of the orgs that were flagged for audit using
7 the targeting criteria. So, again -- and, you know, documents
8 generated relating to the audit. Audits -- if there was an
9 audit, it would be in a separate audit file, and we have no
10 reason to believe there were any audits.

11 The Review of Operations referral sheets are in the case
12 files. Eddie is familiar with those. The rest of
13 Interrogatory 7 isn't about searching for e-mails or document
14 requests. It's about identifying organizations. Well, we
15 have no reason to believe any organizations were audited.

16 The issue of audits is not in the Complaint. It's not
17 part of the class action claim. We really don't think that
18 it's relevant and that it is also a fishing expedition because
19 Eddie could easily poll his people and see if anyone was
20 audited. Then, well, we could look and see that audit file at
21 that time.

22 THE COURT: I think what he's saying, though, Laura,
23 is he wants to know if a discussion of audits was kicked
24 around as a tool to put pressure on these groups, but I don't
25 know if that's exactly paraphrasing it correctly.

1 MR. GREIM: I'll take that, Your Honor. That is what
2 we're asking. If the answer is no --

3 I think I'm starting to actually hear an answer on this
4 call.

5 -- then that can be their interrogatory response, is that
6 no, there's not. But if they say they don't want to look
7 because they don't think they'll find anything, that's
8 different.

9 So I think we're entitled to an answer. Were plans made
10 or weren't they?

11 THE COURT: Well, let me --

12 MS. BECKERMAN: Your Honor, that is not what the
13 interrogatory asked.

14 THE COURT: Okay. Well --

15 MS. BECKERMAN: The interrogatory asked --

16 THE COURT: Okay. Let me take a look at the
17 interrogatory and circle back. Okay, Laura?

18 MS. BECKERMAN: Sure. It's page ID 105 --

19 THE COURT: I'm not going to look at it this second.

20 MS. BECKERMAN: Okay.

21 THE COURT: Okay? All right. What's next then,
22 guys?

23 MR. GREIM: Well, Your Honor, I think everything else
24 -- there is the question of whether they have to respond to
25 our last set of discovery, was it timely or not. We just want

1 a -- I guess we're asking for an answer on that because I
2 think it's still open. We did talk about this briefly on an
3 earlier call. The IRS said that they had tried in vain to get
4 us to talk to them about narrowing the request and that we
5 wouldn't talk to them.

6 You know, Your Honor, we're happy to deal with objections
7 that they have, but we want to do it outside the context of
8 the idea that we served them too late and that this is all,
9 sort of, just to accommodate us. We'd just like the Court to
10 tell us whether we sent them out too late or not to meet our
11 old deadline of March the 30th or twenty -- whatever our old
12 deadline was, March the 30th.

13 THE COURT: Laura and Joe aren't going to like this
14 answer, but it's never too late for discovery.

15 MR. GREIM: Well, Your Honor, if that is the answer,
16 then we'll -- I mean, then we'll work on the objections as
17 objections, and maybe we'll whittle things down in the context
18 of, you know, it's timely. And if there's other issues, we'll
19 work on those.

20 THE COURT: Okay.

21 MR. GANAHL: Your Honor, given that there's no --
22 that it's never too late for discovery, given that we weren't
23 answering these, could we start our response time as of today?

24 THE COURT: Oh, yeah. I don't have a problem with
25 that.

1 MR. GANAHL: Okay.

2 MR. GREIM: Well, Your Honor, the only problem with
3 that is, I mean, we've been talking about the timeliness issue
4 for weeks now, and I'm afraid we're going to get them after
5 the, you know, the -- at least the April depositions at this point.
6 I mean, our --

7 THE COURT: Okay.

8 MR. GANAHL: Your Honor, we will endeavor to get them
9 out as quickly as we can.

10 THE COURT: Yeah. Joe, will you take a look at
11 what's been requested and kind of get a timeframe for what
12 you're going to need and we can circle back to that one as
13 well?

14 MR. GANAHL: We can do that, Your Honor. I will say,
15 a lot of them will lead to objections. For example, they want
16 every high-level IRS employee of an FES grade or a GS-15
17 that's ever had any contact with the White House. That's a
18 little silly. There is request for a FOIA request that has
19 nothing to do with this lawsuit, and they want information
20 withheld on literally a grand jury -- not grand jury, the
21 criminal investigation. They want the names that have been
22 redacted.

23 So I think there will be a lot of objections, but we can
24 look at it, Your Honor.

25 THE COURT: Yeah. It would seem --

1 MS. BECKERMAN: Not redacted by us.

2 MR. GANAHL: Oh, yeah. Not redacted by us, redacted
3 by the F.B.I.

4 THE COURT: Yeah. It would seem to me that
5 organizing the objections is probably more readily
6 accomplished than getting all the responses out, so why don't
7 you do your best on that. Okay?

8 MR. GANAHL: We can do that, Your Honor.

9 THE COURT: Okay. I hate to do this, but do we need
10 to set a follow-up call at this juncture or should we let it
11 sit for a little bit and then circle back?

12 MR. GREIM: Your Honor, if we have a follow-up call,
13 it will make us all get our stuff done, and maybe we can tell
14 you we don't need the follow-up call other than -- or what we
15 could do is, we could have a date to report back to you.

16 THE COURT: Okay. Anybody got any thoughts on how
17 much time we need for that?

18 MS. BECKERMAN: So we would be reporting back on the
19 issue of collaborating with regard to the search and also when
20 plaintiffs think it's time to schedule a settlement?

21 THE COURT: That, and I'll try to --

22 How do you guys want me to inform you of my decision on
23 the relevant dates?

24 MS. BECKERMAN: An order would be fine with us, a
25 minute order.

1 THE COURT: Yeah. Okay. Let me --

2 When do you guys want to come back together?

3 MR. GREIM: Well, Your Honor, if we give you a report
4 -- I mean, we can probably talk very quickly about the other
5 issues. If we give you a report by Monday of this coming
6 week? You know, we're going to be in D.C. taking depositions
7 later in the week. We could just call you together -- oh,
8 wait. No. They've got an argument on the 6th.

9 THE COURT: And Laura is gone, isn't she?

10 MR. GREIM: Not yet. But they've got to argue the
11 other cases, Your Honor.

12 MS. BECKERMAN: We have depositions tomorrow,
13 Thursday and Friday in this case. So perhaps maybe Friday the
14 7th? We have a deposition in this case on the 7th, I believe,
15 scheduled, but we could take a break and do a report-in if
16 that date would work.

17 THE COURT: What are we doing on the 7th, Barb,
18 anything?

19 COURTROOM DEPUTY: We do have the naturalization at
20 Cincinnati State, though, and that starts at one o'clock.

21 THE COURT: Can we do it in the morning of the 7th,
22 guys?

23 MS. BECKERMAN: Sure.

24 MR. GREIM: Well, Your Honor, we were trying to hold
25 that day for a deposition. If we can move that deposition to

1 April 18th or 19th, then the 7th will be open.

2 THE COURT: I think what Laura was saying was you
3 guys would all be together and you'd just call in from the
4 depo, but maybe I'm wrong.

5 MS. BECKERMAN: That was my thought. It sounded like
6 we just needed a short report to the Court, you know, maybe a
7 half-hour or something.

8 THE COURT: Right. Right. We don't need another
9 marathon session. I hate to even ask you --

10 MS. BECKERMAN: If we can call the Court for a
11 half-hour, then do the deposition?

12 THE COURT: I hate to even ask this question, but are
13 you guys anticipating needing us during the course of
14 depositions, or do you think they're going to go along
15 smoothly?

16 MR. GREIM: We've never needed anybody yet, Your
17 Honor.

18 THE COURT: Okay. All right. Let's just pick a time
19 sometime the morning of the 7th just for a quick touch-base.

20 COURTROOM DEPUTY: Okay. At ten o'clock, we have a
21 criminal final pretrial, but I don't think it's going to go.
22 We could use that time, but we also, at 10:30, have a
23 discovery hearing in another case. Then the Cincinnati State
24 naturalization is at one.

25 THE COURT: What time are you guys starting the depo

1 on the 7th; do you know?

2 MS. BECKERMAN: I believe 9:30. We also have a
3 deposition on the 5th where the same -- also here in D.C. If
4 that's a better date for Your Honor, we could probably take
5 time from that deposition to call in for a short update.

6 THE COURT: You want to just do nine o'clock on the
7 7th before you guys start?

8 MS. BECKERMAN: Sure.

9 MR. GREIM: That's fine.

10 THE COURT: Okay. If anybody wants to send me
11 anything to help me along on the timeline stuff, would next
12 Monday be okay for that, or by Friday of this week if you guys
13 just want to, you know, circle back on your arguments?

14 MR. GREIM: Yes, Your Honor. I think Monday, just to
15 be safe, if that's okay.

16 THE COURT: Sure.

17 MS. BECKERMAN: Is there anything particular that
18 would be helpful that the Court is looking for?

19 THE COURT: Yeah. I'm looking for a settlement now.

20 (Laughter.)

21 MR. GREIM: Your Honor, we'll probably give you some
22 documents that show, you know, things that are relevant to the
23 issue of whether the inspections were unauthorized that are
24 before the date in which people started to be segregated and
25 after the date when they were segregated to show that, you

1 know, the unauthorized inspections were not limited to that
2 period, and that evidence about, you know, what the motive of
3 the people doing it was are not limited to the, kind of,
4 coincidental dates when people were being segregated.

5 THE COURT: Could we do it this way then? Could you
6 get something to me by the close of business on Monday, and
7 then Laura could respond by the close of business --

8 I don't know, Laura. You tell me.

9 -- Wednesday, Thursday, something like that?

10 MS. BECKERMAN: Wednesday would be fine.

11 THE COURT: Okay.

12 MR. GREIM: Your Honor, one quick thing. It does
13 relate to the depositions. There have been some -- there is
14 something called an authorization that the IRS gives us under
15 -- it's a long story, but you may already know about this.
16 Basically, those are the topics that we're limited to in our
17 questioning. One concern has been the date range in these.
18 You know, we will be taking, I think, Nan Marks on the 5th and
19 Judith Kindell on the 6th. Those are kind of important
20 people. We would just --

21 You know, even if it turns out that the Court says it's
22 inadmissible, we would like to be able to know that we can ask
23 questions that are outside the targeted date ranges for those
24 depositions just so we don't lose that.

25 THE COURT: Laura?

1 MS. BECKERMAN: Your Honor, there is -- so they have
2 a broader date range, and we've never had an instruction not
3 to answer based on date range.

4 MR. GANAHL: Limited in class.

5 MS. BECKERMAN: Yeah. So I don't think that this is
6 a problem.

7 THE COURT: Okay.

8 MR. GREIM: Mr. Martin has had it recently. He
9 pinged me on it.

10 THE COURT: Well --

11 MR. MARTIN: With that clarification, Your Honor,
12 then we should be good.

13 THE COURT: Yeah. I'm going to go with what Laura
14 just said.

15 MR. GANAHL: I'm sorry, Your Honor. I'm looking at
16 the one for Elizabeth Kastenberg, and it says, "The processing
17 of applications of tax exemptions are in the period January
18 1st, 2010, to the present."

19 I'm not sure that's a date limitation. So it does cover
20 the current period. I think maybe they're confusing class
21 discovery where there was a time limit.

22 THE COURT: Okay.

23 MR. MARTIN: Well, I think there was only a concern,
24 Your Honor, just about making sure that as an issue is still
25 being resolved, that it doesn't create an impediment in the

1 depositions that we've already scheduled, the testimony on
2 authorizations that we've already put together. And it seems,
3 based on what Laura said, that we don't anticipate to
4 encounter that. So it seems like we're all okay.

5 THE COURT: Yeah. That's what I heard from Laura.
6 Okay. All right. Okay, guys. That's where we are. I'll
7 start shopping for another judge to handle the settlement
8 conference.

9 MS. BECKERMAN: Thank you, Your Honor.

10 THE COURT: Cool. All right. Okay. I guess we're
11 finished now; right?

12 MR. GREIM: Yes. Thanks, Your Honor.

13 THE COURT: Thanks, everybody.

14 MR. GENAHL: Thank you, Your Honor.

15 THE COURT: All right. Thank you. Bye.

16
17 (The proceedings concluded at 3:37 p.m.)

18
19 C E R T I F I C A T E

20
21 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
22 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

23 S/MARYANN T. MAFFIA, RDR

24 OFFICIAL COURT REPORTER
25